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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,459	02/27/2002	Kenneth Robert Mohny	01-4946	1827

7590

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EXAMINER

VANATTA, AMY B

ART UNIT

PAPER NUMBER

3765

5

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

NYK

Office Action Summary

Application No. 10/085,459		Applicant(s) MOHNEY, KENNETH ROBERT	
Examiner Amy B. Vanatta		Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 4-8, 11 and 15-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 9, 10 and 12-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restriction

1. Applicant's election with traverse of Species 1 (Figs. 1-3) in Paper No. 4 is acknowledged. The traversal is on the ground(s) that the application should not be divided into 13 species, since differences in structural features should be considered, rather than size, location, or literal features. This argument has been determined to be persuasive with regard to the embodiment of Fig. 10. The Examiner had regarded Fig. 10 as a different embodiment because the towel appeared in the figure to have a different structure which was shaped to fit a female body. Since applicant states that the towel is the same as that of Fig. 1 and is merely worn by a female, this embodiment will be grouped with the elected species of Fig. 1. Applicant's argument is not found persuasive with regard to Figs. 13-14, however, because the below the waist covering is clearly a different species and such species are mutually exclusive. Also, Applicant's argument is not found persuasive with regard to Fig. 6, since the embodiment having advertising is distinct and the search differs, particularly with respect to the "method for advertising" claims. The towel is not disclosed in the specification or figures as having both advertising and the pocket/hook features, so they appear to be mutually exclusive features. With regard to applicant's listing of claims readable on Figs. 1-3, the Examiner notes that claim 9 also reads on Figs. 1-3 since Figs. 1-3 include valuables container 11.

Thus, the claims readable on elected species Figs. 1-3 and Fig. 10 are claims 1, 2, 3, 9, 10, 12, 13, and 14.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, 3, 9, 10, 12, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Moyer (US 4,014,045).

Moyer discloses an apron which forms a hang line towel. Moyer teaches that the apron may be made out of fabric such as denim, such fabric being absorbent and thus forming a "towel" to the extent claimed. The apron includes a body portion 12 which forms a towel as claimed, and includes a hang line 34 attached to the top edge of the towel. The hang line 34 has ends positioned closely to form a hang loop intermediate the first and second attachment portions as claimed. The first attachment portion (33d) is proximate a first top corner and the second attachment portion (33c) is a predetermined distance towards the second top corner as claimed. The hang loop

encircles the wearer's neck as in claims 1 and 2. The towel 12 extends predeterminedly down from the towel hang portion and extends from a first side of the individual which is below the first top corner of the towel to a second side of the individual as claimed (see Fig. 1). The towel extends past the wearer's waist (Fig. 1), thus extending "to proximate a mid section" of the torso as in claim 3. The towel includes a pocket 46 as in claim 10. The pocket forms a "valuables container" as in claim 9, and swings so that the valuables are retained thereon and do not fall out when the wearer bends over. The towel includes a hook fastener (hook portion of mating fasteners 48,39; col. 3, line 22), the hook fastener attaching the pocket 50 to the towel and thus being articulated to fasten items to the towel (i.e. items that are in the pocket). Although Moyer does not disclose what items are carried in the pocket and does not disclose carrying a key or ring in the pocket, such a recitation in claim 12 amounts to the intended use of the pocket and the claim does not specifically claim the key and ring as being in the pocket, i.e. the claim recites that the fastener is used to fasten items to the towel. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Regarding claim 13, the attachment of the hang line to the towel is tension releasable with at least one pressure-release fastener (33b, 35b; col. 2, lines 54-59).

4. Claims 1, 2, 3, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Furgang (US 4,669,128).

Furgang discloses a hang line towel including a towel 10 and a hang line 20 attached to the top edge of the towel (see Fig. 1 or Fig. 5). The hang line 20 has ends positioned closely to form a hang loop intermediate the first and second attachment portions as claimed. The first attachment portion (at 23 or 48) is proximate a first top corner and the second attachment portion (at 22 or 46) is a predetermined distance towards the second top corner as claimed. The hang loop encircles the wearer's neck as in claims 1 and 2. The towel 10 extends predeterminedly down from the towel hang portion and extends from a first side of the individual which is below the first top corner of the towel to a second side of the individual as claimed (see Fig. 3). The towel extends to proximate a mid section of the torso as in claim 3 (see Figs. 3-4). The hang line 20 is disclosed as a string (col. 2, line 52) as in claim 14.

5. Claims 1, 2, 3, 13 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Griffin et al (US 6,505,367).

Griffin et al disclose a hang line towel including a towel 10 and a hang line 14 attached to the top edge of the towel. The hang line 14 has ends positioned closely to form a hang loop intermediate the first and second attachment portions as claimed. The first attachment portion (30) is proximate a first top corner and the second attachment portion (28) is a predetermined distance towards the second top corner as claimed. The hang loop encircles the wearer's neck as in claims 1 and 2. The towel 10 extends predeterminedly down from the towel hang portion and extends from a first side of the individual which is below the first top corner of the towel to a second side of the

individual as claimed (see Fig. 2). The towel extends to proximate a mid section of the torso as in claim 3 (see Fig. 2). The hang line may be attached at one end with a releasable fastener which is a pressure-release fastener forming a tension releasable attachment as in claim 13 (col. 4, lines 43-49). Griffin teaches that the hang line 20 may be made out of soft, flexible material such as woven textiles (col. 4, lines 21-23), thus material being a "cloth fabric" as in claim 14.

6. Claims 1, 2, 3, 9, 10, and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Frye (US 6,334,220).

Frye discloses a garment protector which forms a hang line towel. Frye discloses that the protector may comprise an absorbent towel (col. 3, lines 15-16 and col. 4, lines 49-50) and includes a hang line 12. The hang line (support 12) is attached to the top edge of the towel and has ends positioned closely as a hang loop intermediate the first and second attachment portions as claimed (see Fig. 1). The first attachment portion is proximate a first top corner (see upper left of bib portion) and the second attachment portion is a predetermined distance (i.e. the width of the bib portion) towards the second top corner as claimed. The hang loop encircles the wearer's neck as in claims 1 and 2.

The towel extends predeterminedly down from the towel hang portion and extends from a first side of the individual which is below the first top corner of the towel to a second side of the individual as claimed. Frye discloses that the device covers the stomach of the user (col. 3, lines 13-15), thus extending to proximate a mid section of the torso as

in claim 3. The towel includes a pocket 34 as in claim 10. The pocket forms a "valuables container" as in claim 9, and has adhesive 36 thereon to hold the pocket closed to retain items therein. Regarding claim 13, the attachment of the hang line is tension releasable by tearing one of perforations 14, 62 and includes at least one pressure release fastener (the perforations or the adhesive 18,64). Alternatively, the embodiments of Figs. 4-5 show that the hang line is attached to the towel in such a manner that the attachment includes a pressure release fastener such as Velcro or snaps (60).

Conclusion

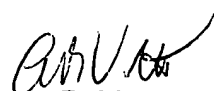
7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy B. Vanatta whose telephone number is (703) 308-2939. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 305-3579 for After Final communications.

Art Unit: 3765

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.


Amy B. Vanatta
Primary Examiner
Art Unit 3765

abv
August 21, 2003